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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,006	07/17/2003	Prem Vakharia	T0095US	1668
68412	7590	11/14/2007		
ROGITZ & ASSOCIATES			EXAMINER	
750 B STREET			MAI, TRI M	
SUITE 3120				
SAN DIEGO, CA 92101			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			11/14/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/622,006

Filing Date: July 17, 2003

Appellant(s): VAKHARIA ET AL.

John L. Rogitz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/06/2007 appealing from the Office action mailed 07/13/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

The rejection of claim 5 is hereby withdrawn from the rejection of Rosenow '749 in view of Kurt.

The rejection of claim 5 is hereby withdrawn from the rejection of Lauretti '245 in view of Kurt '209

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,422,245	Lauretti	6-1947
3,008,209	Kurt	11-1961
3,145,749	Rosenow	8-1964
3,161,932	Russell	12-1964

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 3-4, 16, and 17 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Rosenow (3145749) in view of either Kurt (3008209).

Regarding claim 1, Rosenow '749 teaches golf club 9 having a head '8 (Fig. 4), a head cover (7) formed essentially of flexible, non-rigid material (col. 1, ln. 61-62) the cover body defining an inner compartment (see Fig. 4 for the accommodation of the head), a lower portion for surrounding at least a portion of a shaft of the golf club (note portion 11 accommodating the shaft in Figs. 4, 5 and 6) with at least first and second longitudinal edges (note the longitudinal edges with the zipper 17) in Fig. 4, and the edges being distanced from each other in an open configuration (note Fig. 4 showing the two spaced apart edges in the open configuration).

Rosenow '749 teaches a zipper 17 positioned along the edges but does not teach the fasteners being magnetic fasteners. Kurt '209 teaches that it is known in the art to provide a magnetic fasteners (note the magnetic fastener in Fig. 1) and that the magnetic fastener can use as a substitute to a "regular zipper" (col. 1, ln. 10-32) with various benefits.

"The principal object of this invention is to provide a continuous closure of the general type known as a "zipper" which will be non-fouling and which

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cannot jam or become inoperative by engaging foreign material between the elements thereof.

... that tension forces across the opening cause the hook elements to engage more tightly.

... to provide an extremely easy opening and closing fastener whether used with or without a slider or guide.

... to provide an extremely strong closure resistant.

... to provide a fastener characterized by its simplicity and economy of manufacture." (emphasis added)

Furthermore, Kurt '209 teaches that the magnetic zipper fastener can be used in a variety of applications including covers that have two opposing edges.

"The application of the fastener comprising the present invention may be to any form of fabric, cloth, **cover**, garment, apparel, tarpaulin, bag, container, or other device, which requires closure along a seam and attachment of opposing edges thereof." (emphasis added)

Thus, to provide the fastener 17 of Rosenow '749 with the fastener of Kurt '209 would have been obvious to provide added benefits as set forth above, and/or to provide an alternative type of zipper fastener.

Regarding claim 3, note the first and second magnetic strips in Fig. 1,

Regarding claim 4, note the embodiment of Fig. 3 of Kurt '209 where the magnetic strips comprise a plurality of magnets.

Regarding claim 17, with respect to the method claim, Rosenow '749 teaches the forming of head cover with a slit defined by the two longitudinal edges moving the slit to the open configuration as shown in Fig. 4, engaging the head cover with the club and moving the slit to the closed configuration as evidenced by the Fig. 4 where the club and be insert and removed from the cover. Rosenow '749 teaches the using of a zipper 17 but does not teach the fasteners being magnetic fasteners. Kurt '209 teaches that it is known in the art to provide magnetic fasteners as set forth above. Thus, to provide the fastener 17 of Rosenow '749 with the fastener of Kurt '209

would have been obvious to provide added benefits as set forth above, and/or to provide an alternative type of zipper fastener.

2. Claims 6, 10, 12, and 13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over the Rosenow '749 in view of Kurt '209 rejection, as set forth above in paragraph 1, and further in view of Lauretti (2422245). The combination of Rosenow '749 meets all claimed limitations except for the liner. Lauretti '245 teaches that it is known in the art to provide a liner 20, 21, 22 (col. 2, ln. 55). Thus, It would have been obvious to one of ordinary skill in the art to provide the linings in the cover of Rosenow '749 to provide added protection for the inside club.

Regarding claim 10, another limitation is that the two edges are being generally parallel to each other and this is shown in both the cover of Rosenow '749 and Kurt '209 wherein the two strip fasteners are parallel to one another in the closed position similar to that shown in Fig. 1 of the present application.

Regarding claim 12, note the first and second magnetic strips in Fig. 1,

Regarding claim 13, note the embodiment of Fig. 3 where the magnetic strips comprise a plurality of magnets.

3. Claims 1, 3-5, 16, and 17 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Rosenow (3145749) in view of either Russell (3161932).

Regarding claim 1, Rosenow '749 teaches golf club 9 having a head 8 (Fig. 4), a head cover (7) formed essentially of flexible, non-rigid material (col. 1, ln. 61-62) the cover body defining an inner compartment (see Fig. 4 for the accommodation of the head), a lower portion for surrounding at least a portion of a shaft of the golf club (note portions 11 accommodating the shaft in Figs. 4, 5 and 6) with at least first and second longitudinal edges (note the longitudinal

edges with the zipper 17) in Fig. 4, and the edges being distanced from each other in an open configuration (note Fig. 4 showing the two spaced apart edges in the open configuration).

Rosenow '749 teaches a zipper 17 positioned along the edges but does not teach the fasteners being magnetic fasteners. Russell '932 teaches that it is known in the art to provide a closure fastener having two strips 10 and 11 of magnets 12, 13 along two longitudinal edges (see the two open longitudinal edges in Fig. 1). Russell '932 teaches that this magnetic fastener is an improvement over a "regular zipper" (col. 1, ln. 11)

"The buttons, **zippers**, snap fasteners, and hooks and eyes of the prior art are difficult to manage"

Russell '932 also provides the pertinent motivation for the magnetic zipper:

"The advantages of the invention to mother are very great, as all fumbling for fasteners or snap, hook, button or **zipper type**, is eliminated." (emphasis added, col. 2, ln. 29-31).

Thus to provide the magnetic fastener of Russell '932 in Rosenow '749 would have been obvious thus one can manage the fastening element easily and/or to provide an alternative fastener.

Regarding claims 3 and 4, note the two strips 10 and 11 each having a plurality of magnets.

Regarding claim 5, note that in each strip the made up from a plurality of magnets disposed in a sleeve 26 shown in Fig. 4. Russell '932 does not teach at least four magnets in each sleeve. However, it would have been obvious for one of ordinary skill in the art to provide at least four magnets in each strip to provide the desired amount of magnets for securely closing the closure.

4. Claims 6, 10, 12, and 13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over the Rosenow '749 in view of Russell '932 ' rejection above in paragraph 1, and further in view of Lauretti (2422245). The combination of Rosenow '749 meets all claimed limitations except for the liner. Lauretti '245 teaches that it is known in the art to provide a liner 20, 21, 22 (col. 2, ln. 55). Thus, It would have been obvious to one of ordinary skill in the art to provide the linings in the cover of Rosenow '749 to provide added protection for the inside club.

Regarding claim 10, another limitation is that the two edges are being generally parallel to each other and this is shown in both the cover of Rosenow '749 and Russell '932 wherein the two strip fasteners are parallel to one another in the closed position similar to that shown in Fig. 1 of the present application.

5. Claims 1, 3, 4, 6, 10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauretti in view of Kurt (3008209). Lauretti '245 teaches golf club G having a head (Fig. 7), a head cover (C) formed essentially of flexible, non-rigid material, the cover body defining an inner compartment (see Fig. 7 for the showing of the accommodation of the head), a lower portion for surrounding at least a portion of a shaft of the golf club (note about portion 24 accommodating the shaft) with at least first and second longitudinal edges (note the longitudinal edges with the zipper 14) in Figs. 4 and 5, and the edges being distanced from each other in an open configuration (note Fig. 4 showing the two spaced apart edges in the open configuration).

Lauretti '245 teaches a zipper 14 positioned along the edges but does not teach the fasteners being magnetic fasteners. Kurt '209 teaches that it is known in the art to provide a magnetic fasteners and that the magnetic fastener can use as a substitute to a "regular zipper"

(col. 1, ln. 10-32) with various benefits such as providing a more tightly closure, providing easy opening and closing of the fastener, providing an extremely strong closure resistant, and ease of manufacture.

Thus, to provide the fastener 17 of Lauretti '245 with the fastener of Kurt '209 would have been obvious to provide added benefits as set forth above, and/or to provide an alternative type of zipper fastener.

Regarding claims 4 and 13, note the embodiment of Fig. 3 of Kurt '209 where the magnetic strips comprise a plurality of magnets.

Regarding claims 6 and 10, note the liner 20, 21, and 22 (col. 2, ln. 54 - col. 3, ln. 3).

Regarding claim 10, note the fasteners in both Lauretti '245 and Kurt '209 are arranged parallel as claimed.

6. Claims 1, 3-6, 10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauretti '245 in view of Russell (3161932). Lauretti '245 teaches golf club G having a head (Fig. 7), a head cover (C) formed essentially of flexible, non-rigid material, the cover body defining an inner compartment (see Fig. 7 for the showing of the accommodation of the head), a lower portion for surrounding at least a portion of a shaft of the golf club (note about portion 24 accommodating the shaft) with at least first and second longitudinal edges (note the longitudinal edges with the zipper 14) in Figs. 4 and 5, and the edges being distanced from each other in an open configuration (note Fig. 4 showing the two spaced apart edges in the open configuration). Russell '932 teaches that it is known in the art to provide a closure fasteners having two strips 10 and 11 of magnets 12, 13 along two longitudinal edges (see the two open longitudinal edges in Fig. 1). Thus, to provide the magnetic fastener of Russell '932 in Lauretti '245 would have been

obvious thus one can manage the fastening element easily and/or to provide an alternative fastener.

7. The examiner hereby submits that claims 16 and 17 could have been rejected within the rejection of Lauretti '245 in view of Kurt, as set forth in paragraph 5 of this section, or Lauretti '245 in view of Russell '932 as set forth in paragraph 6 of this section. However, this would have been redundant since the rejections Lauretti '245 in view of Kurt '209 or Russell '932 was meant only to simplify the rejection over the teaching of the liner taught by Lauretti '245. The rejections of claims 16 and 17 have been previously addressed within the rejections of Rosenow '749 in view of Kurt '209 as set forth in paragraph 1 of this section, and Rosenow '749 in view in view of Russell '932 as set forth in paragraph 3 of this section.

(10) Response to Argument

Applicant's arguments along with the affidavits filed on 07/31/06 have been fully considered but they are not persuasive.

In response to applicant's argument that either Kurt '209 and Russell '932 are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Kurt '209 and Russell '932 are pertinent in term of providing the appropriate fastener for closing the longitudinal slit of the cover, and both are pertinent in term of solving the same problem as discussed in this application.

With respect to Kurt '209, Kurt '209 provide explicit teaching that this type of zipper is equivalent in the same class of a regular zipper and in certain aspects, superior to a regular zipper. Kurt '209 discuss the pertinent problems associate with a regular zipper similar to that of applicant's:

"The principal object of this invention is to provide a continuous closure of the general type known as a "zipper" which will be non-fouling and which cannot jam or become inoperative by engaging foreign material between the elements thereof.

... that tension forces across the opening cause the hook elements to engage more tightly.

... to provide an extremely easy opening and closing fastener whether used with or without a slider or guide.

... to provide an extremely strong closure resistant.

... to provide a fastener characterized by its simplicity and economy of manufacture." (emphasis added)

Applicant also asserts that Kurt '209 is specific to clothes and large and heavy material such as canvas. The examiner submits that this is not the case. The teachings set forth in Kurt '209 address much more than clothing and large and heavy material, Kurt also address cover and bag containers. The fact that Kurt '209 explicitly teaches that the fastener can be used with cover is evidence that Kurt '209 is a pertinent art in the rejection. Kurt '209 teaches that the fastener can be used in a multitude of applications including cover device with attachment of opposing edges thereof:

"The application of the fastener comprising the present invention may be to any form of fabric, cloth, **cover**, garment, apparel, tarpaulin, bag, container, or other device, which requires closure along a seam and **attachment of opposing edges thereof.**" (emphasis added)

Thus, the examiner submits that to provide the zipper of Kurt '209 in Rosenow '749 would have been obvious.

Even to the degree that the Board found the fastening device of Kurt '209 is not pertinent, one of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and that there would have been a predictable result of success. In KSR, the Supreme Court caution the granting of patents based on the combination of elements found in the prior art. The Supreme Court wrote that:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

In this case, both the club cover and the magnetic fastener are both prior art, and combining the two references of Rosenow '749 and Kurt '209 would have yield predictable results or improvement as taught by Kurt.

In addition, the examiner submits the following principle of law in *Pfizer v. Apotex* wherein the court affirmed that the claim would have been obvious because "a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary and common sense"

In this case, the examiner submits that a person of ordinary skill would have used the suggestions of Kurt '209 to try the magnetic zipper in Kurt '209 since both are directed to zipper type fasteners.

With respect to Russell '932, as discussed in the rejection, Russell '932 teaches the same pertinent problems and that this magnetic fasteners is an improvement over a "regular zipper"

(col. 1, ln. 11). Russell '932 teaches that this magnetic fastener can be used in place of a "regular zipper" for easy management.

"The buttons, **zippers**, snap fasteners, and hooks and eyes of the prior art are difficult to manage"

Russell '932 also provide the pertinent motivation for the magnetic zipper:

"The advantages of the invention to mother are vary great, as all fumbling for fasteners or snap, hook, button or **zipper type**, is eliminate." (emphasis added, col. 2, ln. 29-31).

Applicant asserts that the teaching of Russell '932 is specific to garment, and nonanalogous to covering devices. The examiner submits that Russell '932 is pertinent to the particular problem with which the applicant was concerned. Russell '932 discussed the advantages over the zipper type where one would fumble for the zipper and provided the pertinent solution by providing the magnetic fasteners so that the problem is eliminated.

Even to the degree the Board decides that the Russell '932 reference is nonanalogous art in this case, the examiner again seeks the Board consider the combination in view of the principle of law based upon KSR Int'l Co. V. Teleflex Inc. in similar manner as applied to Russell '932 to Rosenow '749 in view of Kurt.

In this case, the examiner submits that in this case, the claim is obvious in view Rosenow '749 in view of Russell '932 since both the club cover and the magnetic fastener are both prior art, and combining the two references of Rosenow '749 and Russell '932 would have yield predictable results in addition to improvement as demonstrated by Russell '932. Furthermore, in view Rosenow '749 in view of Russell '932, a person of ordinary skill would have used the suggestions of Russell '932 to try the magnetic zipper in Russell '932 since both (Rosenow and

Russell) are directed to zipper type fasteners and given Russell '932 's suggestion of the improvement over the regular zipper type fastener.

As with the combination with Lauretti '245, the examiner submits that it would have been obvious for one of ordinary skill in the art to provide a liner as taught by Lauretti to provide added protection.

With respect to the rejections of Lauretti in view of Kurt, and the Lauretti or Russell '932 follow the same arguments as set forth above with Rosenow '749 in view of Kurt '209 and Rosenow '749 in view of Russell '932 with all pertinent facts and motivations as demonstrated above.

It is noted that the Declaration under 37 CF 1.132 has been fully considered but they are not persuasive. In paragraphs 1-3, the declaration explained the various types of clubs and club covers. These structures are taught by both Rosenow and Lauretti. The benefits explained in paragraphs 4 and 5 are generally opinions and these are not based on any facts. Furthermore, the examiner submits that the benefits as explained in the declaration have been fully addressed in both Kurt and Russell.

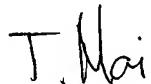
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tri Mai



Primary Examiner, AU 3781

Conferees:

Anthony Stashick (SPE), Marc Jiminez

